PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah Street, Suite 2000
Portland, Oregon 97232

January 11, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

Re: Docket UM 2225—Joint Utility Response

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) and Portland General Electric Company (PGE) respectfully submits the response to application for rehearing or reconsideration.

If you have questions about this filing, please contact Stephanie Meeks at (503) 813-5867.

Sincerely,

Matthew McVee
Vice President, Regulatory Policy and Operations

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2225

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, House Bill 2021 Investigation into Clean Energy Plans.	Joint Utility Response To Application for Rehearing or Reconsideration

In accordance with OAR 860-001-0720(4), Portland General Electric Company (PGE) and PacifiCorp (together the Joint Utilities) respectfully respond to the Application for Rehearing or Reconsideration of the Public Utility Commission of Oregon (OPUC or Commission) Order Nos. 22-390, 22-446, and 22-477, filed by the Oregon Solar and Storage Industries Association (OSSIA), the Community Renewable Energy Association (CREA), and NewSun Energy LLC (NewSun) (collectively, the Developers), and related Supplement filed by NewSun.

As discussed below, the Commission's actions in Docket UM 2225 are correct as a matter of law, reasonable, and no rehearing or reconsideration is appropriate.

I. INTRODUCTION

Commission Staff initiated an investigation into House Bill (HB) 2021 in early 2022, and to date the Commission, Staff, and Stakeholders have engaged in a thoughtful and wide-ranging investigation. Discussions have generally been productive and collaborative, Stakeholders have reached general consensus on several issues, and future processes are anticipated to resolve contested issues where further investigation is needed. The Commission has appropriately adopted a guidance framework for the initial Clean Energy Plans (CEPs) that aligns with the statutory

requirements for CEPs, integrates with established Commission processes such as integrated resource planning, and reflects diverse input from stakeholders and community.

From these discussions the Joint Utilities have begun the important process of restructuring stakeholder engagement practices, community benefit indicators, and resource procurement. A successful outcome of these processes requires time and engagement. The Joint Utilities are confident that the Commission and Stakeholders will appreciate the breadth and depth of anticipated utility actions in the initial and subsequent Clean Energy Plans (CEPs). In the next seven years, the Joint Utilities anticipate procurement of multiple gigawatts of renewable and non-emitting energy and capacity, building out substantial transmission and distribution infrastructure to support reliability and resiliency goals, and working with communities to determine appropriate goals and priorities. That says nothing about the additional actions taken in the following fifteen years to comply with HB 2021's ambitious goals.

This is an exciting time for Oregon, and the Joint Utilities look forward to continue collaborating with all Stakeholders to ensure that the goals of HB 2021 are met. The Joint Utilities were strong supporters of HB 2021 through the legislative process, and continue to support implementation before the Commission.

That said, a small group of vocal renewable energy developers appear to view this proceeding differently. In their view, at times the Commission and Commission Staff have been negligent,[1] or exhibited poor judgement.[2] The Joint Utilities respectfully disagree, and because the

[1] Suppl. at 3 ("These are absurd and inappropriate outcomes, but they are wholly plausible to occur under HB 2021 implementation based on the Commission's orders' inadequacy, permissiveness, and/or failure to provide Oregon and the Commission basic obvious data around the same, and to fail to require REC retirement the Oregon's have procured and mandated to reduce emissions. Such cannot be permissible and is negligent relative to known issues.").
[2] *Id.* at 4 ("Further, the parties believe that the Commission's gross lack of adequate action, relative to the scale and nature of the situation surrounding HB 2021, which comprises a generational exploitation opportunity of the utilities it regulates, [allows the utilities] to abuse the HB 2021 statute opportunities created for their gain . . .").

Developers raise these opinions in a formal pleading requesting rehearing or reconsideration of several Commission Orders, a response is demanded.

II. STANDARD OF DECISION

The Commission will grant reconsideration or rehearing of a prior Commission order when "sufficient reason" is presented.[3] Sufficient reasons include demonstrating errors of law or fact that are essential to the Commission's decision, or identifying other good cause to further examine an issue.[4]

III. ARGUMENT

All parties agree that HB 2021 is binding, and the Commission reasonably declined to address administrative penalties during this initial investigation. The Commission also correctly concluded that HB 2021 is an emissions standard; reasonably determined that additional REC reporting was unnecessary given already robust reporting and transparency; correctly concluded that HB 2021 is limited to retail electric sales in Oregon and cannot apply to out-of-state sales; reasonably declined to adopt overly prescriptive and duplicative "technical feasibility" guidelines; correctly provided guidance and allowed utilities flexibility for initial CEPs; reasonably declined to recommend a linear trajectory for emissions reductions; and NewSun's Supplement does not merit a response or Commission consideration. Accordingly, the Application does not present sufficient reasons for reconsideration or rehearing, and should be denied.

A. All parties agree that HB 2021 is binding, and the Commission reasonably declined to address administrative penalties during this initial investigation.

HB 2021, codified in Oregon Revised Statute (ORS) 469A.400 to 469A.475, is a binding legislative mandate. Relevant to the Developers' arguments, the statutes detail the greenhouse gas

[3] ORS 756.561(1).
[4] OAR 860-001-0720(3).

(GHG) emissions reduction targets the electric utilities must meet, subject to limited exemptions, and the requirements for filing CEPs.[5] No party has argued that HB 2021 is discretionary. Therefore, there is no legal basis for the Developers' arguments that the Orders were incomplete or somehow deficient because they did not reiterate that HB 2021 is binding.

Yet the Developers argue that reconsideration is required because "the Commission by failing to correct on the record statements made indicating that HB 2021 may not be binding."[6] This allegation is based on a Commissioner statement from a May 2022 Public Meeting.[7] The Developers conclude that if this statement was corrected, "the final CEP requirements would likely have looked entirely different."[8] For example, the Commission "should immediately make a statement in writing that it views the HB 2021 emissions reduction targets as binding on electric utilities, that there will be compliance obligations on the utilities unless they have exemptions under the reliability pause or the cost cap, and that there will be consequences for failure" to achieve those targets.[9] This correction would send "a clear signal to utilities that they must comply with the targets in HB 2021."[10]

The Commission should disregard this argument. Procedurally it does not satisfy the Commission's regulations for rehearing or reconsideration. Developers do not identify any aspect of a Commission Order—nor even cite to one—where the Commission concluded in a written decision that HB 2021 is not binding. Instead, Developers speculate that a single Commissioner public statement (ignoring the fact though a majority vote of three OPUC Commissioners is required to issue an order in an investigative proceeding), somehow influenced subsequent

[5] ORS 469A.415.
[6] Dev. App., at 6.
[7] *Id.* at 7.
[8] *Id.* at 6.
[9] *Id.* at 9-10.
[10] *Id.* at 10.

Commission decisions in UM 2225. Procedurally this argument lacks merit; Commissioner public statements do not provide grounds for reconsideration.[11]

More importantly to the substance, the Commission made clear during its November 1, 2022 Public Meeting that HB 2021 is binding.[12] This is an unsurprising statement, as the Commission merely restated the truism that the agency's role is to implement the laws that the Legislature enacted. No party has argued that HB 2021 does not bind utilities, nor has the Commission disregarded the Legislature's duly-enacted legislation.

As a legislative mandate, HB 2021 binds utilities and the Commission—no party disputes that. But there is nothing in the statute that indicates that *CEP guidelines* adopted *by the Commission* must be strictly applied or enforced by penalties. On the contrary, the only reference to penalties in the statute *prohibits* penalties in certain cases.[13] It is clearly within the Commission's statutory discretion to determine, as it did in this proceeding, the flexibility that utilities must be afforded when developing their initial CEPs.

Finally, the Developers argue that the Commission must immediately open a rulemaking to establish penalties for potential utility non-compliance, address the Developers' concerns about Renewable Energy Credit (REC) reporting and accounting, and require that utility progress towards reaching the emissions targets be linear. The Joint Utilities disagree. First, the statute contains no mandate that the Commission adopt rules on these subjects. Moreover, the

[11] OAR 860-001-0720(2)(a) (Application must specify the portion of "*the challenged order* that the applicant contends is erroneous or incomplete.") (emphasis added).
[12] Oregon Public Utility Commission Presentation from November 1, 2022 Public Meeting: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://edocs.puc.state.or.us/efdocs/HAH/um2225hah93142.pdf (Video of Public Meeting available: https://oregonpuc.granicus.com/player/clip/1037?view_id=2&redirect=true&h=5f280e3cd6f2510de532e771cc1c555b).
[13] ORS 469A.440(6) ("An order issued under subsection (5) of this section may not impose a penalty but may require the use of alternative compliance rates or payments, if applicable, as provided in ORS 469A.180 during the period of time a temporary exemption is in effect.")

Commission's decision to limit its rulemaking directed by Order 22-447 to procedural matters is entirely reasonable. Considering that initial CEPs are anticipated in early 2023, the Commission's Orders represent prudent decisions that account for the transformative state policy reflected in HB 2021 and the significant time-sensitive efforts required from both the utilities and the Commission to realize the Legislature's ambitious clean energy goals. As Staff noted in its threshold "Planning Framework" proposal, compliance penalties are not called for in the HB 2021 regulatory framework, and establishing "reasonable, defensible compliance penalties" prior to gleaning utility compliance strategies from initial CEPs would "divert focus away from setting meaningful expectations for robust engagement and decarbonization planning."[14] Staff's statement recognizes the important work and collaboration that must occur prior to the utilities submitting initial CEPs, and the understanding that a focus on penalties at this point in time would be misplaced. The Joint Utilities therefore support the Commission's decision to focus an immediate-term rulemaking on adopting CEP procedural rules.[15]

For these reasons, the Commission should deny relief on this issue.

B. The Commission correctly concluded that HB 2021 is an emissions standard.

The Developers argue that reconsideration of Order 22-390 and 22-446 is warranted because the Commission should have required utilities to retire renewable energy credits (RECs) associated with generating resources used to satisfy HB 2021.[16]

The Developers argue the "underlying intent of HB 2021 shows the statutory scheme of the law is to provide benefits of carbon emission free electricity to Oregonians,"[17] and this intent

[14] Order No. 22-206, Appendix A at 15. Staff also noted that "UM 2225 surfaced issues related to ensuring continual progress and enforcing annual planning goals. These compliance issues are important to address but this rulemaking is not an appropriate venue" Order No. 22-477, Appendix A at 9.
[15] *See* Order No. 22-477.
[16] Dev. App., at 11–15.
[17] *Id.* at 12.

points only towards a REC-based standard. Developers advance this claim even though RECs are not mentioned in HB 2021, the law contains no discussion of a delivery standard, and "despite the language in ORS 469[A].430"[18] that confirms HB 2021 is an emissions standard.[19]

The Developers present various collateral arguments. None are relevant or persuasive. For example, the Developers argue that HB 2021's policy statement in ORS 469A.405(1) that utilities must "eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers" supports a delivery standard,[20] even though the policy focuses on emissions, does not discuss RECs and even assuming this policy was relevant, and ignores the fact that while policy statements provide "useful context for interpretating a statute," they cannot "provide an excuse for delineating specific policies not articulated in the statutes."[21] The Developers argue that "baseline emissions level" defined in ORS 469A.400(1)(a) as emissions "associated with the electricity sold to retail electricity consumers" for years 2010, 2011, and 2012, supports a delivery standard even though this is a definition that applies to historic baseline emissions and has no relevance for future emissions or compliance actions, and despite ORS 469A.410(2) that explicitly prevents utilities from tracking "electricity to end use retail customers."[22] The Developers argue that the Commission has broad discretion to consider "any relevant factors" when determining whether a clean energy plan is in "the public interest," even though ORS 469A.410(2) prevents utilities from tracking "electricity to end use retail customers" and ORS 469A.430 explicitly requires an emissions standard.[23] Finally, the Developers spuriously argue that somehow PGE's website that

[18] *Id.*
[19] ORS 469A.430 ("For the purposes of determining compliance with ORS 469A.400 to 469A.475, electricity shall have the emission attributes of the underlying generation resource.").
[20] *See* Dev. App., at 11.
[21] *Sundermier v. State,* 269 Or.App. 586, 595, 344 P.3d 1142, 1147 (Or. 2015).
[22] *Id.*
[23] *Id.* at 12.

discusses the utility's "customers" is a tacit admission by PGE that HB 2021 is a REC-based standard.[24]

The Commission should disregard these arguments. As noted in PacifiCorp's earlier comments on this issue, HB 2021 is unambiguous.[25] Utility compliance is directly tied to longstanding DEQ reporting statutes and rules. The REC retirement issue was discussed at length during negotiations of HB 2021, and Stakeholders achieved consensus on the emissions standard.[26] The language in ORS 469A.410(2) and ORS469A.430 was included to explicitly differentiate between generation and delivery standards. The Commission can comfortably rely on the plain language of the bill and stakeholder legislative testimony to conclude that HB 2021 is emissions-based.

More importantly, IRPs and IRP updates already include a forecast of RECs allocated to Oregon, itemized by their treatment.[27] There is additional transparency into actuals in the Joint Utilities' annual RPS reporting, biannual renewable portfolio standard implementation plan, and annual filings to the OPUC that detail REC supply for voluntary programs. To the extent that stakeholders have concerns with alleged "double-counting," there is ample information already provided. Further, Western Renewable Energy Generation Information System was established to ensure that RECs cannot be double counted.

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[24] *Id.* at 15.
[25] *In re OPUC HB 2021 Investigation,* PacifiCorp Resp. to OPUC Staff's Straw Proposals on Analytical Improvements, at 8–9 (Oct. 5, 2022).
[26] *See generally*, HB 2021 Legislative Record, Support for House Bill 2021-A and -46 Amendment, Comments of Climate Solutions and Oregon Environmental Council (May 13, 2021) ("The HB 2021-A and the -46 amendments represent thoughtful negotiation with many stakeholders representing diverse interests in an ambitious and pragmatic 100% clean policy for Oregon. Energy stakeholders representing the utilities, energy service suppliers and ratepayer advocates, along with renewable developers, climate, environmental justice and community representatives have worked together for many months to find common ground. We have collectively reached consensus on the HB 2021-46 amendment up for your consideration. This bill and the -46 amendments represent a well-crafted 100% clean energy policy for Oregon.").
[27] *See In re PacifiCorp's 2021 IRP Update,* Executive Summary, at 14, Figure 1.13.

The Commission correctly concluded that HB 2021 is an emissions standard, and HB 2021 does not require utilities to retire RECs associated with energy delivered to Oregon customers. The Commission should deny relief on this issue.

C. The Commission reasonably determined that additional REC reporting was unnecessary given already robust reporting and transparency.

In Order 22-446 the Commission declined to recommend that utilities report how RECs are sold to different Oregon providers, sold to entities outside Oregon, and banked and sold either in-state or out-of-state, with a recommendation for utilities to "report the approximate number of MWhs not associated with RECs reported in the referenced table that are generated from renewable energy technologies."[28] The Developers argue that reconsideration of Order 22-446 is warranted because there is good cause to revert to staff's initial recommendation to create additional transparency into utility REC practices.[29]

The Commission should deny relief on this issue. As noted during public comment on this issue, the Joint Utilities already have robust REC reporting for IRP purposes as well as RPS compliance reports and biannual renewable portfolio standard implementation plans. The Commission reasonably limited the need for additional REC reporting guidance, and reconsideration or rehearing is unnecessary.

D. HB 2021 is limited to retail electric sales in Oregon and cannot apply to out-of-state sales.

The Developers ask the Commission to require utilities to report the use of thermal units to serve loads outside of Oregon, model retirements and conversions of thermal plants in the initial CEPs, report prospective and actual emissions associated with the sale of thermal plant output to

[28] Order 22-446 at 1.
[29] Dev. App., at 16-17.

customers in other states, and include in the calculation of the utility's GHG emissions the emissions of all thermal plants—including plants that have been removed from the utility's portfolio and Oregon retail rates.[30] Although the Developers seem to recognize HB 2021's explicit terms are limited to sales of electricity to retail customers within Oregon, they make two arguments in support of their proposal: (1) these actions are necessary to avoid undermining the intent of HB 2021, and (2) that the public interest standard included in the statute somehow expands the scope of HB 2021 and the Oregon and United States Constitutions.

Neither argument is valid.

First, the Developers suggest that to the extent utilities sell electricity to customers in other states, it could subvert the intent of HB 2021.[31] The regulation of electricity sales outside the State of Oregon would subvert the legislative intent, not the other way around. The plain language of HB 2021 requires *retail* electricity providers to decarbonize the electricity sold to Oregon *retail* electricity consumers by 2040.[32] Correspondingly, a utility must annually report "[GHG] emissions associated with the electricity sold to *retail* electricity consumers"[33] in Oregon[34] to the Department of Environmental Quality[35] and the Commission must utilize the reported emissions to determine whether the utility has met the HB 2021 clean energy targets.[36] HB 2021 was drafted to require reductions to emissions associated with sales to Oregon retail customers, not outside the state. Moreover, had HB 2021 been drafted as broadly as the Developers suggest, to prohibit sales

[30] Dev. App., at 17-20.
[31] Dev. App., at 17-18.
[32] ORS 469A.405(1) (emphasis added).
[33] ORS 469A.420(4)(a).
[34] ORS 469A.400 (defining "Retail electricity consumer" as a retail electricity consumer, as defined in ORS 757.600, that is serviced by a retail electricity provider and located in Oregon); ORS 757.600(29) (a "Retail electricity consumer" is an "end user of electricity for specific purposes such a heating, lighting or operating equipment, and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility.").
[35] ORS 469A.420(4)(a).
[36] ORS 469A.420(4)(b).

of electricity from emitting resources to customers outside of the state, the prohibition would be unenforceable.[37] The Legislature reasonably avoided this unconstitutional scope.

The Developers are also incorrect that sales of electricity from emitting generation resources "could result in virtually no overall reduction in greenhouse gas emissions[.]"[38] The emissions reductions outlined by HB 2021 within Oregon are not offset by sales from thermal resources to out-of-state purchasers. In short, the intent of the statute is that emissions related to providing service to Oregon retail customers be reduced.[39] That goal is achieved regardless of the energy mix used in other states.

Second, the Developers argue that it is appropriate for the Commission to regulate out-of-state sales of thermal plant output because HB 2021 requires the Commission to evaluate whether the utility's CEP is "in the public interest."[40] This position is overbroad because HB 2021's list of factors the Commission must consider when determining whether a CEP is in the public interest does not include the GHG emissions of thermal plants generating power to serve out-of-state loads.[41] This makes sense, because the legislature made clear that the intent of HB 2021 was to eliminate GHG emissions associated with serving "*Oregon retail electricity consumers,*" not out-of-state operations.[42] Further, primary among the principles of statutory construction is codified in ORS 174.010—"not to insert what has been omitted." Because the

[37] U.S. Const. Art. I, § 8; U.S. Const. Art. VI, § 2; *Brown-Forman Distillers Corp. v. New York State Liquor Auth*., 476 U.S. 573, 579, (1986) (the dormant Commerce Clause prohibits states from regulating in a way that discriminates against or unduly burdens interstate commerce, including when one state's energy laws adversely impact another state).
[38] Dev. App., at 17.
[39] ORS 469A.405(1).
[40] Dev. App., at 19.
[41] ORS 469A.420(2) (the Commission shall acknowledge a CEP if the Commission finds the plan to be in the public interest and consistent with the emissions reduction targets set forth in ORS 469A.410); ORS 469A.420(2)(a)-(f) (in determining whether a CEP is in the public interest, the Commission shall consider (a) any reduction of GHG emissions expected through the plan, and any related environmental or health benefits, (b) the economic and technical feasibility, (c) the plan's effect on system reliability and resiliency, (d) the availability of federal incentives, (e) costs and risks to customers, and (f) any other relevant factors as determined by the Commission).
[42] ORS 469A.405(1) (emphasis added).

legislature clearly and specifically limited the application of HB 2021 to sales to retail customers located within Oregon, the Developers cannot credibly argue that the public interest referenced in the statute should be expanded to consider sales outside of the state.

Regardless whether the Developers agree with the Commission's findings and Orders or not, the Commission did not commit an error of law by failing to do something that the legislature did not authorize it to do in the first place, and if it had, would be unenforceable.[43]

E. The Commission reasonably declined to adopt overly prescriptive and duplicative "technical feasibility" guidelines.

The Developers argue for reconsideration of Order 22-390 and 22-446 regarding technical feasibility.[44] They argue that the Commission should require additional guidance on technical feasibility and "require that the utilities address realistic interconnection, transmission, and permitting process timelines" and also account for various contingencies.[45] The Developers also state that the Commission should immediately initiate a rulemaking to determine what additional criteria the Commission will consider when determining technical feasibility.[46]

ORS 469A.420(2) states that the OPUC shall acknowledge an electric company's CEP if it is in the public interest and consistent with the clean energy targets set forth in ORS 469A.410. The statute sets forth what the Commission should consider in evaluating whether the plan is in the public interest. This includes "the economic and technical feasibility of the plan."[47]

In Order 22-390, the Staff's analysis correctly found that "technical feasibility is not directly addressed in the IRP Guidelines, but such consideration is consistent with current practice

[43] U.S. Const. Art. I, § 8; U.S. Const. Art. VI, § 2.
[44] Dev. App, at 20-21.
[45] *Id.* at 22.
[46] *Id*. at 23.
[47] ORS 469A.420(2)(b).

in the IRP and was discussed in Order No. 07-002 (page 4)."[48] The Developers' request that the Commission direct utilities to directly consider uncertainties regarding interconnection, transmission, permitting and development timelines is unnecessary and overly prescriptive.

F. The Commission correctly provided guidance and allowed utilities flexibility for initial CEPs.

The Developers argue that reconsideration of Orders No. 22-390 and 22-446 is warranted because the Commission should have issued requirements instead of guidelines, or in the alternative that there is good cause to strengthen the guidelines in the order.[49]

As an initial matter, the Commission should disregard this argument because it is unsupported. Motions for reconsideration and rehearing must include "the challenged order that the applicant contends is erroneous or incomplete," the "portion of the record, laws, rules, or policy relied upon to support the application," and the "change in the order that the Commission is requested to make."[50] The Developer's motion is silent on each of these issues, because the motion does not indicate what Commission statements are incorrect as a matter of law. Instead, the Developer's assert that two sentences from Order 22-390 should apply "to all guidance offered to the utilities in this UM 2225 (and is not limited to the Community Benefits Indicators and the Community Lens Study)" docket.[51] The Commission should deny relief on these grounds alone.

On the merits, in Order No. 22-390 the Commission appreciated the importance of CEP guidelines, while acknowledging the need for flexibility in their application. Specifically, the Commission recognized that the feasibility of its expectations—particularly related to the Community Benefits Indicators and the Community Lens Study—might not be fully understood

[48] Order No. 22-390 Appendix A at 52.
[49] Dev. App., at 23-26.
[50] OAR 860-007-0720.
[51] Dev. App. at 26.

until after the utilities' initial CEP filings. In making this acknowledgment and in declining to adopt a penalty framework in UM 2225, the Commission understood that there may be legitimate circumstances under which the utilities might deviate from strict application of its guidelines.

The Developers' implication that the Commission relied on a legal misinterpretation that Commission orders in investigative dockets do not have the same legal force and effect as other orders[52] belies the truth of the matter—that Developers are displeased that the Commission did not immediately adopt penalties, something Developers have argued for throughout this proceeding.[53] But disagreeing with a party's position in a proceeding does not equate to legal error. The statutory language dictating the scope and extent of utility and Commission obligations is clear. HB 2021 generally requires the utilities to decarbonize their retail electricity sales, ORS 469A.415 requires utilities to develop and file CEPs for meeting HB 2021's clean energy targets, and ORS 469A.420 outlines the requirements and considerations for the Commission to acknowledge CEPs that are in the public interest and consistent with the clean energy targets. The Commission can therefore determine whether to acknowledge CEPs if they are in the public interest; the Commission does not need compliance-based penalties to make this decision and the Orders are clear as to what is expected of the utilities in their initial CEPs.

The Orders do not create ambiguity, are not incomplete, and the Developers have failed to show good cause for reconsidering the Commission's determinations in this regard.

G. The Commission reasonably declined to recommend a linear trajectory for emissions reductions.

The Developers argue there is good cause to reconsider the Order No. 22-390's recommendation for "year-over-year" emissions reductions, and instead require a linear

[52] *Id.* at 23-24.
[53] *Id.* at 6-7.

trajectory.[54] The Developers argue that without a linear trajectory emissions reductions "may result in the utilities only making minor strides towards reducing GHG emissions in most years and illustrating compliance just-in-time to meet the targets," because "utilities can simply re-allocate on paper which resources serve which loads or 'swap' power in the market (selling electricity from thermal resources out of state and purchasing other renewables) to show compliance on paper but not necessarily result in actual reduction in GHG emissions."[55] The Developers argue that HB 2021's requirement that the Commission ensure that a utility "demonstrates continual progress . . . and is taking actions as soon as practicable" implies a predetermined linear emissions trajectory.[56]

This argument is without legal basis and unreasonable. As a matter of law, while CEPs must demonstrate that utilities are making "continual progress" towards meeting HB 2021 clean energy targets, nothing in HB 2021 requires a linear emissions reduction trajectory.[57]

Requiring linear emissions reductions is also impracticable and could impose unreasonable costs and risks on utility customers. As the Developers acknowledge, achieving HB 2021's goals will require a tremendous amount of new renewable resources, and the development of new technologies that could require significant lead time. New generation technologies would also need to be vetted before utility-scale adoption, and utility-stakeholder engagement processes and community benefit indicators are in their infancy will take time to mature. It would be nearly impossible for utilities to reduce emissions on a linear schedule given these various concerns.

Instead, actual emissions will vary based on factors like weather, increasing electrification, incremental resource acquisition timelines, and additional factors, such as procurement and

[54] *Id.* at 26-28.
[55] *Id.* at 27-28.
[56] *Id.* at 27-28.
[57] ORS 469A.415(4)(e).

construction schedules—many of which are outside of utilities' control. Attempting to ensure a linear trajectory could result in the acquisition of resources that are more costly and impose more risk than more reasonably timed acquisitions.

Given these concerns, the Commission has reasonably recommended an approach that will ensure year-over-year emissions reductions on an expected basis, while providing utilities necessary flexibility to time new renewable resource acquisitions based on least- cost, least-risk principles. The Commission should therefore deny the Developer's relief.

H. NewSun's Supplement does not merit a response or Commission consideration.

NewSun submitted a seven-page Supplement to the Developer's Application for Rehearing or Reconsideration. The Commission should ignore the Supplement because it is speculative, caustic, and unsupported because it does not provide evidence that the order is erroneous or incomplete.[58]

IV. CONCLUSION

The Joint Utilities respectfully request the Commission deny the Developer Application for Rehearing or Reconsideration.

[58] OAR 860-007-0720 (the supplement does not indicate any aspect of the challenged order as erroneous or incomplete, nor the portion of the record, laws, rules or policy relied upon to support the application). Additionally, the Joint Utilities note that individuals that appear before the Commission in a representative capacity must follow the Oregon Rules of Professional Conduct (Oregon Rules of Professional Conduct (as amended, effective March 1, 2022). If they do not, they can be removed from the current proceeding (including this investigation) and prohibited from appearing in subsequent proceedings (including future HB 2021 and CEP proceedings). These are not arbitrary requirements that create barriers for participation; they are common-sense, reasonable standards that ensure Commission, Staff, and Stakeholder resources are used effectively when devoted to resolving complex and important issues.

Respectfully submitted this 11th day of January, 2023.

/s/ Erin Apperson
Erin Apperson
OSB No. 175771
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
(503) 464-8544
erin.apperson@pgn.com

Counsel for PGE

/s/ Zachary Rogala
Zachary Rogala
OSB No. 222814
PacifiCorp
825 NE Multnomah St.
Portland, Oregon 97232
(435) 319-5010
Zachary.rogala@pacificorp.com

Counsel for PacifiCorp